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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GEORGE SAADIAN,

Plaintiff and Appellant,

v.

CELL-CRETE CORPORATION,

Defendant and  
Respondent.

B284895

(Los Angeles County  
Super. Ct. No. BS136236)

APPEAL from an order of the Superior Court of Los Angeles County, Terry A. Green, Judge. Reversed.

Bruce Altschuld, Esq. for Plaintiff and Appellant.

Law Offices of David L. Brault, David L. Brault and Robert Lindkvist for Defendant and Respondent.

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George Saadian (Saadian) appeals from postjudgment order confirming Cell-Crete Corporation's (Cell-Crete) arbitration award against Saadian and denying Saadian's motion to vacate the award. Saadian raises several issues on appeal, but we need only decide one: whether the trial court erred when it referred Saadian and Cell-Crete to arbitration without first determining whether the arbitrator had jurisdiction over Saadian as a nonsignatory to the arbitration agreement. We find that the trial court exceeded its authority and reverse the order.

### **BACKGROUND**

The dispute began in October 2007 when Shenanwood Development, Inc. (Shenanwood) filed a demand for arbitration against defendant Cell-Crete arising out of a development project for a condominium. Shenanwood and Cell-Crete agreed to submit any dispute over the condominium project to mandatory and binding arbitration. Saadian signed the arbitration agreement in his capacity as Shenanwood's president. Cell-Crete prevailed at arbitration and was awarded contractual attorney fees and costs.

In July 2012, the trial court granted Cell-Crete's motion to confirm the award, entering judgment against Shenanwood and denying Shenanwood's petition to vacate. One month later, Cell-Crete moved to amend the judgment to add Saadian as a judgment debtor on the theory that Saadian was Shenanwood's alter ego. Before the trial court ruled on Cell-Crete's motion to amend, Shenanwood appealed the order denying its motion to vacate the arbitration award. The trial court stayed the motion while Saadian's appeal was pending. We affirmed the order in

April 2014. (*Shenanwood Development, Inc. v. Cell-Crete Corporation et al.* (Apr. 9, 2014, B243625) [nonpub. opn.]..)

After the order was affirmed on appeal, Cell-Crete filed a renewed motion to amend the judgment to add Saadian as an additional judgment debtor on an alter ego theory. The trial court denied Cell-Crete's renewed motion to amend, stating that the issue presented a factual question that should be decided by the arbitrator, allowing the parties to call witnesses and develop the facts. The trial court indicated that it was not comfortable making a ruling based only on the limited declarations submitted by the parties, referring the matter back to arbitration to make factual findings on whether it should amend the judgment to add Saadian as a judgment debtor. Saadian filed a motion for reconsideration of the trial court's order, arguing that the arbitrator lacked jurisdiction over him because he had not individually consented to arbitration. The motion was denied.

Saadian filed a motion to dismiss for lack of jurisdiction before the arbitrator. The arbitrator denied the motion, found that Saadian was Shenanwood's alter ego, and amended the award to include Saadian as an additional judgment debtor. The trial court confirmed the award and denied Saadian's petition to vacate. Saadian appealed.

## **DISCUSSION**

### **I. Standard of review**

"We review de novo the trial court's order confirming the arbitration award." (*Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1435.) "Whether an arbitration agreement is binding on a third party (e.g., a nonsignatory) is a question of law

subject to de novo review.” (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 680.)

## II. The arbitrator’s jurisdiction over nonsignatories

“ ‘Although California has a strong policy favoring arbitration [citations], our courts also recognize that the right to pursue claims in a judicial forum is a substantial right and one not lightly to be deemed waived. [Citations.] Because the parties to an arbitration clause surrender this substantial right, the general policy favoring arbitration cannot replace an agreement to arbitrate. [Citations.] Thus, the right to compel arbitration depends upon the contract between the parties, [citations], and a party can be compelled to submit a dispute to arbitration only where he has agreed in writing to do so.’ ” (*Smith v. Microskills San Diego L.P.* (2007) 153 Cal.App.4th 892, 896.) There are, however, several recognized exceptions for compelling nonsignatories to arbitration, including when a nonsignatory is the alter ego of a party to the agreement. (*Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1513.) The question of whether a nonsignatory can be compelled to arbitration “is one for the trial court in the first instance.” (*American Builder’s Assn. v. Au-Yang* (1990) 226 Cal.App.3d 170, 179.)

Here, the trial court referred Cell-Crete and Saadian to arbitration to make factual findings on whether Saadian, a nonsignatory, could be added as an additional judgment debtor without first determining whether the arbitrator had jurisdiction over Saadian at all. This was error. The trial court was required to make the alter ego finding in the first instance. (*Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 469 (*Benaroya*).)

Cell-Crete’s contention that the trial court addressed the arbitrator’s jurisdiction over Saadian on two occasions when it

denied Saadian's September 2015 motion for reconsideration and his motion to strike the arbitrator's ruling<sup>1</sup> is meritless. First, the trial court did not consider the jurisdictional issue on Saadian's motion for reconsideration when that motion was denied. Second, it makes no difference that the trial court found Saadian to be an alter ego when it ruled on Saadian's motion to strike the arbitrator's ruling because that determination would have been a prerequisite to compelling Saadian to arbitration. Regardless of the merits of Cell-Crete's alter ego theory, allowing the arbitrator to determine whether Saadian was an alter ego cannot be considered harmless error. "Only the superior court has jurisdiction to amend the award to add an alter ego." (*Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conf. Center Bd.* (1996) 41 Cal.App.4th 1551, 1555.)

Cell-Crete relies on several cases<sup>2</sup> where nonsignatories were compelled to arbitration, but those cases are procedurally distinguishable in that they involved proceedings where the trial court, not the arbitrator, decided whether the nonsignatory was subject to the arbitrator's jurisdiction. Here, the trial court stated that it was not comfortable ruling on the alter ego issue based on the limited facts before it and delegated that decision to the arbitrator. Thus, unlike the cases cited by Cell-Crete, the

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<sup>1</sup> After the arbitrator denied Saadian's motion to dismiss, but before Saadian petitioned the trial court to vacate the award, Saadian moved to strike the ruling on the grounds that the arbitrator was without jurisdiction.

<sup>2</sup> *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1517, *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 70–71, and *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1281–1282.

wrong decision-maker decided the issue here.<sup>3</sup> (*Benaroya, supra*, 23 Cal.App.5th at p. 475.)

Lastly, Cell-Crete argues that the arbitration agreement was intended to address any controversy arising from or related to the performance of the agreement, which would include whether Saadian could be held liable as an alter ego. This is incorrect. “[N]otwithstanding an arbitrator’s broad authority to resolve questions presented by a controversy, an arbitrator has no power to determine the rights and obligations of one who is not a party to the arbitration agreement.” (*American Builder’s Assn. v. Au-Yang, supra*, 226 Cal.App.3d at p. 179.) Individually, Saadian never agreed to delegate any issues to the arbitrator.<sup>4</sup> (See *Benaroya, supra*, 23 Cal.App.4th at p. 475.)

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<sup>3</sup> Saadian also argues that he should be awarded attorney fees under Civil Code section 1717, subdivision (a) which provides that “[i]n any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded . . . to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees.” In the dispute between Saadian individually and Cell-Crete, there has yet to be a prevailing party because the trial court must decide whether Saadian is Shenanwood’s alter ego.

<sup>4</sup> In some circumstances a party’s conduct may evidence an implied agreement to arbitrate. (*Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 387–388.) But, consent “will not be inferred solely from a party’s conduct of appearing in the arbitral forum to object to the arbitrator’s exercise of jurisdiction, at least if the party makes that objection ‘prior to participat[ing]’ in the arbitration.” (*Id.* at p. 387.) There is also no indication that

## **DISPOSITION**

The order is reversed. George Saadian is awarded his costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.

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Saadian impliedly consented to arbitration through participation. Indeed, Saadian consistently disputed the arbitrator's jurisdiction over him individually in both the trial court and before the arbitrator.